

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In re

CUSTOMS AND TAX ADMINISTRATION
OF THE KINGDOM OF DENMARK
(SKATTEFORVALTNINGEN) TAX
REFUND SCHEME LITIGATION

This document relates to: 1:18-cv-05374; 1:18-
cv-08655

MASTER DOCKET

18-md-2865 (LAK)

DECLARATION OF ERIC SMITH

I, Eric Smith, hereby declare as follows:

1. I am an attorney at Kostelanetz & Fink LLP, counsel for Third-Party Plaintiffs and Defendants-in-Counterclaim Del Mar Asset Management Savings and Retirement Plan (the “Del Mar Plan”) and Federated Logistics LLC 401(K) Plan (the “Federated Plan”) (together, the “Plans”).
2. I submit this Declaration in support of the Plans’ motion to dismiss the counterclaim of Third-Party Defendant and Counterclaimant ED&F Man Capital Markets Ltd. (the “Motion”).
3. Attached hereto as “Exhibit 1” is a true and correct copy of the Plans’ Third-Party Complaint, filed in the above-captioned matter as Dkt. No. 220 on November 5, 2019.
4. Attached hereto as “Exhibit 2” is a true and correct copy of ED&F Man Capital Markets Ltd.’s Third-Party Defendant ED&F Man Capital Markets LTD.’s Answer to Third-Party Plaintiffs Del Mar Asset Management Savings and Retirement Plan’s, Federated Logistics LLC 401K Plan’s, and David Freelove’s Third-Party Complaint, filed in the above-captioned matter as Dkt. No. 283 on March 2, 2020.

5. Attached hereto as “Exhibit 3” is a true and correct copy of the Re-Re-Amended Particulars of Claim filed by Plaintiff Skatteforvaltningen (“SKAT”) on or around February 5, 2020, in the English case captioned Skatteforvaltningen v. Solo Capital Partners LLP et al., CL2018-000297, CL-2018-00404, CL-2018-000590 (the “English Action”). To comply with ECF file size limitations, Exhibit 3 has been broken into two parts (3A and 3B).

6. Attached hereto as “Exhibit 4” is a true and correct copy of the “Re-Amended Schedule 5T” filed by SKAT in the English Action.

7. Attached hereto as “Exhibit 5” is a true and correct copy of the Further Particulars Regarding the Validity of WHT Refund Applications filed by SKAT in the English Action on or around February 28, 2020.

8. Attached hereto as “Exhibit 6” is a true and correct copy of ED&F Man’s Amended Defence (with Annex E), filed in the English Action.

9. Annexed as “Exhibit 7” is the following foreign case, not available on Westlaw, which the Plans cite in their memorandum in support of the Motion:

a. *Smith v. U.M.B. Chrysler (Scotland) Ltd* [1978] WLR 165

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
March 30, 2020

/s/ Eric Smith
ERIC SMITH